United Nations A/AC.273/2008/L.1

General Assembly

Distr.: Limited
9 April 2008

Original: English

Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission
Second session
New York, 7-9 and 11 April 2008

Draft report

Rapporteur: Minna-Liina **Lind** (Estonia)

I. Introduction

1. The second session of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission was convened in accordance with paragraph 7 of General Assembly resolution 62/63. The Committee met at Headquarters from 7 to 9 and on 11 April 2008.

2. In accordance with paragraph 1 of resolution 61/29, the Committee is open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency.

3. At its 3rd meeting, on 7 April 2008, the Committee elected Zainol Rahim Zainuddin (Malaysia) as Vice-Chairperson to replace Ganeson Sivagurunathan (Malaysia), who was no longer available to serve in that capacity. The Committee paid tribute to Mr. Sivagurunathan for his valuable contribution to the work of the Committee. At the same meeting, the Committee also elected, as Rapporteur, Minna-Liina Lind (Estonia), who in 2007 had replaced Martin Roger (Estonia), as a friend of the Chairperson for purposes of the Working Group of the Sixth Committee on criminal accountability of United Nations officials and experts on mission. The Bureau was thus constituted as follows:

Chairperson:
Maria Telalian (Greece)

Vice-Chairpersons:
El Hadj Lamine (Algeria)
Ruddy Flores Monterrey (Bolivia)
Zainol Rahim Zainuddin (Malaysia)

Rapporteur:
Minna-Liina Lind (Estonia)

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4. The Director of the Codification Division of the Office of Legal Affairs, Mahnoush H. Arsanjani, acted as Secretary of the Ad Hoc Committee. The Codification Division provided the substantive services for the Committee.

5. At its 3rd meeting, the Committee adopted the following agenda (A/AC.273/L.2):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Continued consideration of the report of the Group of Legal Experts established by the Secretary-General pursuant to General Assembly resolution 59/300, in particular its legal aspects, taking into account the views of Member States and the information contained in the note by the Secretariat.
6. Adoption of the report.

6. The Committee had before it:

(a) A note by the Secretary-General transmitting the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980);

(b) A note by the Secretariat on criminal accountability of United Nations officials and experts on mission (A/62/329);

(c) The report of the Committee on its previous session.[1]

Other documents were available for reference purposes.

II. Proceedings

7. The Committee held two plenary meetings, on 7 and 11 April 2008.

8. At its 3rd meeting, held on 7 April 2008, the Committee adopted its work programme and decided to proceed with its discussions in the context of a working group of the whole. The Committee also held a general exchange of views, during which delegations made statements. A summary of the debate is contained in section III below.

9. The Working Group held four meetings, from 7 to 9 April 2008. It organized its work by focusing its discussions on the issues concerning international cooperation contained in the report of the Group of Legal Experts (A/60/980). In particular, discussions revolved around such general issues as: (a) facilitating investigations by the host State; (b) facilitating investigations by States other than the host State; (c) administrative investigations by the United Nations; and (d) legislative and other changes. The discussion also addresses specific issues, including such matters as: (a) timely notification and reporting mechanisms;

[1] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 54* (A/62/54).

(b) collecting and securing the integrity of evidence (testimony, material, confidentiality) and use by States of material provided by the United Nations; (c) conduct of on-site investigations (consent and conditions for consent); (d) extradition and mutual legal assistance; (e) role of the United Nations (independent and professional administrative investigation); (f) role of experts, including military lawyers and military prosecutors with knowledge of the requirements of the State's military law; (g) admissibility (of evidence in a foreign jurisdiction); (h) recognition (of administrative investigation by the United Nations); (i) due process issues; (j) transfer of criminal proceedings; and (k) transfer of prisoners.

10. Representatives of the secretariats of the Office of Internal Oversight Services and the Office of Legal Affairs were also available to respond to questions raised by delegations in the Working Group.

11. An informal summary of the discussions of the Working Group is contained in annex I to the present report. The summary was prepared by the Chairperson for reference purposes only and not as a record of the discussions.

12. The Working Group subsequently considered an informal working paper on international cooperation, prepared by the Chairperson. The informal working paper is contained in annex II.A; oral and written amendments are contained in annex II.B; and proposals submitted by delegations are contained in annex II.C. Consideration of the informal working paper will continue in the context of a working group to be established by the Sixth Committee at its sixty-third session.

13. At its 4th meeting, on 11 April 2008, the Ad Hoc Committee adopted the report on its second session.

III. General comments made in plenary

14. During the general exchange of views, delegations reiterated their support for the zero-tolerance policy concerning criminal conduct (in particular in cases of sexual exploitation and abuse) committed by United Nations personnel and experts on mission and reaffirmed the need to ensure strict observance of the rule of law in accordance with the principles of justice and international law. It was observed that criminal offences committed by United Nations personnel caused harm not only to the victim but also to the victim's family and to the host State community. Such actions also constituted a violation of trust, which could seriously damage the reputation of the United Nations and impede its effectiveness in carrying out its mandate.

15. Support was expressed for General Assembly resolution 62/63 and the Assembly's emphasis therein on States establishing, to the extent they had not already done so, jurisdiction over criminal activity committed by their nationals serving with the United Nations. It was noted that by inviting Member States to provide information on their jurisdictional competence, as well as on the mechanisms put into place for following up on allegations of criminal activity, resolution 62/63 would contribute towards clarifying the nature and scope of any procedural and jurisdictional gaps. Several delegations commented on the importance of the report of the Secretary-General on the implementation of the resolution, requested by the Assembly, and called on all States to submit the

necessary written contributions by the deadline of 1 July 2008. Support was also expressed for the reference in the resolution to predeployment training and awareness-raising activities. Approval was expressed for the United Nations Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse by United Nations Staff and Related Personnel, adopted by the Assembly in resolution 62/214, as well as for resolution 61/291, in which the Assembly amended the revised draft model memorandum of understanding.[2]

16. Commenting on the legal and policy aspects of international cooperation among States, and between States and the United Nations, highlighted in the report of the Group of Legal Experts, support was expressed for the proposal that States should expand their cooperation on the exchange of information, extradition, the serving of sentences and on other measures to facilitate the effective exercise of criminal jurisdiction, including judicial assistance mechanisms. Similarly, cooperation with the United Nations could cover the exchange of information, assistance with respect to procedural issues (such as the gathering of evidence), reporting on the current status of investigations and enhancing the rule of law capacities. It was also suggested that existing conventional instruments could be of relevance and that consideration could be given to the model status-of-forces agreement and the model status-of-mission agreement, which included a number of provisions on cooperation. Reference was also made to the fact that while criminal investigation remained the primary responsibility of the host State, evidence gathered by the United Nations nonetheless remained important for subsequent criminal proceedings. It was noted that there might be third States (such as the State in which the crime was allegedly committed), other than the host State and the State of nationality of the perpetrator, which may have an interest in possible criminal investigations.

17. Some delegations were of the view that the procedures for the collection of evidence by the Office of Internal Oversight Services were too irregular to be admissible in criminal proceedings. It was also observed that some States maintained restrictions on the authorities who were competent to gather evidence. It was further pointed out that consideration had to be given to the fact that countries varied in terms of stage of institutional development and it was suggested that efforts could be undertaken to bolster host State capacity by providing assistance to host States in conducting investigations.

18. Some delegations reiterated the view that it was premature to discuss the possibility of negotiating an international convention on the topic, as had been proposed by the Group of Legal Experts, and as had been subsequently supported by the Secretariat in its note. It was argued that it was necessary to understand the actual impediments to prosecution, before embarking on the negotiation of a convention. Some delegations expressed support, in principle, for a convention requiring Member States to exercise jurisdiction over their nationals participating in United Nations operations. It was noted that while bilateral agreements existed in the area, they provided incomplete coverage and did not usually address judicial cooperation between States and the United Nations. Other recommendations included developing a protocol of cooperation between States and the Office of

[2] See A/61/19 (Part III): to be issued in final form, together with parts I and II, as *Official Records of the General Assembly, Sixty-first Session, Supplement No. 19* (A/61/19).

Internal Oversight Services. A suggestion was also made for an agreed set of terminology.

19. It was pointed out that other issues, such as the scope *ratione personae*, the definition of crimes involved and issues relating to jurisdiction, merited further consideration. A preference was expressed for not limiting the topic to personnel involved in peacekeeping operations, while excluding members of military contingents. Several delegations expressed support for including all crimes within the scope of the topic, not only those involving sexual exploitation and abuse. It was further recommended that efforts should be made to coordinate with the Special Committee on Peacekeeping Operations, as well as with the Fifth Committee, to avoid duplication and divergent outcomes.

IV. Recommendation

20. At the 4th meeting, on 11 April 2008, the Ad Hoc Committee, bearing in mind paragraph 7 of resolution 62/63, reiterated the recommendation that the Sixth Committee, during the sixty-third session of the General Assembly, establish a working group, with a view to continuing the consideration of the report of the Group of Legal Experts (A/60/980) established by the Secretary-General pursuant to resolution 59/300 focusing on its legal aspects, also taking into account the views expressed in the Ad Hoc Committee [*to be completed*].

Annex I

Informal summary of the discussions of the Ad Hoc Committee on the report of the Group of Legal Experts, prepared by the Chairperson

[*see A/AC.273/2008/L.1/Add.1*]

Annex II

Informal working paper on international cooperation, prepared by the Chairperson for the consideration of the Working Group, together with oral and written amendments and proposals made by delegations

[*see A/AC.273/2008/L.1/Add.2*]